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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,118	02/28/2001	Thomas Schulte	10191/1566	5238

26646 7590 10/23/2002

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EXAMINER

DICUS, TAMRA

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/719,118

Applicant(s)

SCHULTE ET AL.

Examiner

Tamra L. Dicus

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### **Response to Amendment**

1. This Office Action is responsive to the amendment filed August 6, 2002. The rejection of claim 10 under the second paragraph of 35 U.S.C. 112 is sustained. The rejections of claims 9-17 (including new and amended claims) are maintained under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 3,700,857 to Brandes et al, and under 35 U.S.C. 102(b) as being anticipated by USPN 4,659,960 to Toya et al. The new rejection of claims 9-17 under the first paragraph of 35 U.S.C. 112 is detailed below.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 9-17 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner believes that independent claim 9 (amended) and independent claim 14 (new) do not have the proper support in the original specification as filed because the specification does not provide any teaching or discussion on an evaluation device or its usage with Applicant's claimed temperature sensor. Further the Examiner cannot find any other reference to the device and its connection or even how it is connected. With regard to the drawings, the figures do not show an evaluation device, especially one that is connected to the

Art Unit: 1774

claimed sensor, as per Applicant's admission - "evaluation device not depicted" (see pg. 3, lines 18-24). No further discussion of evaluation devices is presented in the instant application.

***Claim Rejections – 35 USC § 102/103***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the Applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the Applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 9-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 3,700,857 to Brandes et al.

Brandes discloses a resistance heater comprising electrically insulating refractory material, such as alumina and zirconia, which are coated with a certain thickness thin film of an electrically conducting material such as any transition metal elements such as platinum and nickel (see col. 2, lines 24-68 and patented claims). The process of coating the insulating

Art Unit: 1774

particles may be by any conventional coating or plating technique, such as electroless plating (see col. 3, lines 1-4). The particles are used as a powder (see col. 3, line 14). The coated particles are compacted, such as pressing and electrophoresis (see col. 3, lines 15+), and are heated to a temperature to effect sintering of the powders (see col. 3, lines 33-34). These metal coated particles cited by Brandes inherently possess excellent electrical conductivity and heat. Brandes further describes with the use of a pair of electrodes in a laminated layer wound around the electrically insulating coated particles coated with a thin layer of electrically conductive material will inherently allow the passage of current through the electrodes and may be applied to any shaped body (see col. 3 line 60-col. 4, line 3 and Figure 2). No patentable distinctions are seen.

4. Alternatively, the reference does not explicitly state defining the resistance heater as a temperature sensor. However, the presently claimed temperature sensor would function as a temperature sensor since the same components are provided. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977).

5. Claims 9-17 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4,659,960 to Toya et al.

Toya discloses various embodiments of a spark plug (temperature sensor) comprising an electrode element (carrier) of a metal oxide, carbide, or nitride powders, (such as zirconia, silicon nitride, or titanium carbide) coated with a noble metal, where an electrode axis (conductor track) of nickel or precious metals such as platinum covers the surface of the electrode element embedded in a laminated structure (see col. 2, line 46 – col. 3, line 6; Figures and patented claims). The process utilized may employ various coating techniques including chemical and

Art Unit: 1774

physical vapor deposition processes (see col. 3, lines 7-35; col. 3, lines 65+; col. 4, lines 25+).

No patentable distinctions are seen.

### **Response to Amendment**

4. Applicant's arguments filed August 8, 2002 have been fully considered but they are not persuasive.

The Applicant contends that Brandes does not teach an evaluation device, and thereby doesn't anticipate the amended claims. The Examiner does not agree. The amended and new claims include new matter, and therefore such amendments have not been treated in this examination. Therefore, the previous rejection is maintained.

Applicant further contends that Brandes does not teach an evaluation device in connection with a conductor track to measure the change in resistance of the conductor track from temperature changes. The Examiner does not agree. Again, the use of an evaluation device is new matter and not given weight.

Applicant urges that Toya does not anticipate the pending claims for the same reasons that Brandes does not anticipate. Again, the Examiner does not agree for the same aforementioned reasons.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the

Art Unit: 1774

mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is (703) 305-3809. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703) 308-0449. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-8329 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
Tamra L. Dicus  
Examiner  
Art Unit 1774

October 21, 2002

CYNTHIA H. KELLY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

